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## Caster Semenya and the Cage Fight for Justice.

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# Caster Semenya and the Cage Fight for Justice

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## Abstract

Given how contentious and divisive the case involving South African runner Caster Semenya and International Association of Athletics Federation (IAAF) eligibility policies is among sports fans, the media and academics, it is a good time for analysis of prominent arguments on both sides. We incorporate a discussion embedded in an account of a mixed martial arts (MMA) cage fight to address the ethical issues surrounding sex verification, the gender binary in sport, testosterone and performance enhancement, and human rights. We consider this a unique way of examining arguments in support of Semenya's eligibility to run in the women's division and arguments against. While our treatment incorporates light-hearted elements, we wish to emphasize that we do not mean to trivialize in any way the serious and important issue under discussion and the harm that has already been done to persons as a result of IAAF policies.

**Key words:** Caster Semenya, gender binary, sport, fairness, human rights.

## 1. Introduction

*A booming energetic voice comes through the loudspeaker in the sold out arena, as bright lights shine and dance in the octagon: 'It's Friday night fight night folks! Before I introduce our main draw for tonight, we need to look at the situation that caused so much disagreement that it brought these two fiery female fighters to battle it out tonight.'*<sup>1</sup>

More than a decade ago, an athlete named Caster Semenya ran 1:55.45 to win the women's 800-meter event at the World Championships in Berlin. Her rapid improvement (she ran a full 8.5 seconds slower less than one year earlier) and her masculine appearance caused some to question whether she should be allowed to compete in the women's category (Karkazis et al, 2012). In response, the IAAF required Semenya to undergo medical testing. Although the results of the (sex verification) tests were not made public, amid media speculation that she was intersex, Semenya was allowed to retain her gold medal and continue to compete. In 2011, the IAAF issued hyperandrogenism regulations, requiring all female athletes to maintain testosterone levels within usual female range—0.12-1.79 nmol/L. Semenya's race times became markedly slower, from 1:56.35 in 2011 to 157.23 in 2012, 158.92

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in 2013, and 2:02.66 in 2014, presumably because she was taking oral contraceptives to bring her testosterone within the prescribed range (Burfoot, 2019).

In 2014, another athlete with a Difference of Sex Development (DSD), Dutee Chand, challenged the IAAF rules, appealing to the Court of Arbitration for Sport (CAS). In 2015, CAS ruled that further evidence was required to show that the degree of advantage due to DSD was significant, and suspended the IAAF regulations for a period of three years (later extended in a fourth), giving the IAAF time to gather and present such evidence. During that period, Semenya's race times became markedly faster, from 1:59.59 in 2015 to 1:55.28 in 2016, 1:55.16 in 2017, 1:54.25 in 2018, and 1:54.98 in 2019 (iaaf.org, 2019).

Claiming evidence based on a couple of studies that were later largely discredited, the IAAF issued new eligibility regulation in 2018, requiring athletes competing in the women's division to show testosterone levels below 5.0 nmol/L for 6 months before competing and then maintain that level (Pielke, et al., 2019). As noted above, the usual female testosterone range is 0.12-1.79 nmol/L, while the usual male level is 7.7-29.4 nmol/L (Longman, 2019). However, the IAAF's studies showed significant competitive advantage only in some events, so the new regulations applied only to track events from 400 meters to the mile.

In February 2019, Semenya appealed the new regulations to the CAS. In May, the CAS denied Semenya's appeal, allowing the IAAF regulations on testosterone to stand, so Semenya appealed to the Swiss Federal Tribunal (SFT), which suspended the regulations in June in order to consider the case, but denied the appeal in July. The SFT was Semenya's last court of appeal, so the regulations are currently in place. Disagreement about the legitimacy of the regulations has been widespread and passionate.

*The announcer next introduces the fighters, 'In the turquoise trunks, is Rockin' Riley, who is fighting for Semenya to be able to compete at the upcoming 2020 Tokyo Olympics, and in the lime green trunks, Swinging Sally, fighting for fair competition and challenging spectator science.' The two women smirk at each other and flash mouth guards. The zebra for tonight's match is Bernice, known for her commitment to adherence to constitutive and regulative rules. For this particular battle royale, Bernice is most concerned that the fighters ensure they don't conflate issues, an approach which has unfortunately become common in similar bouts. Bernice reminds the fighters that the fight must focus solely on the issue of sex verification and Semenya, and not dabble, even when an opportunity arises to pin an opponent down, in arguments surrounding trans athletes' participation and inclusion in elite sport. Although that may be an important fight to have, and may involve similar arm grabs and chokeholds, the analysis of the regulations and policy regarding the inclusion of trans athletes will need to be saved for next month's headliner.*

### **Round 1: Binary Boom**

Riley makes the first move and channels her inner Rebecca Lock strategy who taught Riley that being good at sport implies being good at performing femininity and appearing heterosexual (Lock, 2013). In Semenya's case, she fails to meet the above idealistic socially constructed standards. Semenya's muscular upper body frame, powerful thighs, hairstyle, deep voice, and breast size do not meet the entrenched criteria of femininity. For Davis and Edwards (2014),

to be heterosexually unsuccessful is to fail at being a woman. And again, given the preceding staunch binary opposition which respectively conflates physical, psychological and social qualities, to be at once be a woman who fails to be a woman is culturally alarming, since one exposes that the constituents of the female side of the binary are not superglued but can instead be disaggregated (pp. 46-47).

Riley adds that the IOC and IAAF policies are based on the rationale that the main justification to have sex-segregated sport is because of the discrepancy in athletic performance between men and women, and the perpetuation of the myth that all men are more athletically skilled than all women. Riley finds this approach rational and believes there are other reasons for sport to remain sex segregated but also reinforces the need to look at ‘upgrading’ sport and refers to Sailors’ work on mixed competition. Sailors (2014) argues that the question of whether sport should be sex-segregated is more complex than often recognized and not easily answered. It is simply untrue that all women are athletically inferior to all men, and the degree of difference depends in large part on the sport. Still, the preservation of the protected category for women is important because it guarantees women the opportunity for competitive success, an opportunity that would be lost for the most part by eliminated sex categories entirely (Sailors, 2014; 2016).

Riley’s greatest concern in this battle is not that sport is sex segregated, but rather the binary categorizations that prompt expectations regarding femininity and heterosexuality. Moreover, Riley argues that the problem then becomes how the categories and resulting binary configurations of men and women are regulated and enforced. Riley reminds Sally that sex verification was originally put into place to protect women’s sport from men who were imagined would masquerade as women in order to dominate women’s sports (Pieper, 2016). Sex verification ultimately became a process to police women’s bodies, which was and continues to be framed in the notion of ‘fair play.’ Additionally, as Pielke (2017) argues, the problem with sex verification is that biological sex does not often divide into two categories because it is complex and cannot be determined by any single characteristic or combination of characteristics (Pielke, 2017). We struggle with women athletes like Semenya, who don’t fit the pervasive restrictive societal ideals and norms. Riley argues via an arm bar that sex verification is not an effective approach to deal with ensuring fairness within the categories.

Semenya not only failed to look the feminine heterosexual part when she ran onto the scene in 2009, but she also ran faster everyone else. Lock argues that what we are most concerned with women and doping is not that they cheated by doping, but rather that they altered their bodies and appear more masculine (Lock, 2003). Riley adopts Lock’s technique to argue that not only did Semenya appear more masculine than her competitors did; she also possessed superior speed, and consequently, her sex was challenged. A BBC 2011 documentary, ‘Too fast to be a woman: The story of Caster Semenya’, showcases the aftermath of Semenya’s struggles and the global debate around biological sex. Riley tries to keep her moves simple and argues that we too often neglect to consider the primary purpose of sex verification—the perceived need to protect women’s sports from cheating men pretending to be women. The support of sex verification reaffirms the restrictive and inconclusive binary in sport. In essence, sex is not as binary as the institution of sport; at least not as specifically as the IAAF wants and needs it to be.

Riley's final move in this round is to remind Sally that Semenya is a woman and as such wants, and should be allowed, to compete as one. Riley argues it is relevant to emphasize the social construction of femininity and heterosexual ideals. Specifically, Riley refers to 2009 when Semenya, awaiting the IAAF decision regarding her eligibility, was featured on the cover of *You* magazine, a South African publication. In the photograph is a different Semenya, a feminized woman. Journalist Nskosi describes the image in the following manner,

Gold looks good on her. She wears it well. On a *You* magazine cover in September 2009, gold drips from her neck and arms. It pours out of her skin. In the image, Semenya beams, a full afro framing her face. A gold chain-link necklace hangs past her shoulders, down past her chest and rests heavy over her breasts, stopping some millimetres shy of her manicured hands, her nails a burnt red-purple hue. The cover announces itself loudly: "We turn SA's POWER GIRL into a glamour girl – and SHE LOVES IT! Wow, look at Caster NOW!" (Nskosi, 2019).

The point for Riley is that femininity is something that can be created or fabricated. Femininity signifiers such as hairstyle, jewelry, makeup and dress assist in emphasizing feminine qualities and heterosexuality. Riley wonders as she attempts to gain her footing to strike again, that if Semenya adopted this inauthentic feminized version of herself on the track, would she have received the same backlash? As Munro (2010) claimed, "Semenya's gender presentation thus summons up the figure of the lesbian, regardless of what her own sexual orientation might be" (p. 392). Riley counters with an argument from Lock (2003) who drew attention to the track and field athlete Florence Griffith Joyner, or Flo Jo, who was considered heterosexually feminine enough to overshadow her power and strength, and was described in the following manner,

[H]er physical presence was startling: with her loose, flowing hair, her perfectly muscled body, her brightly-coloured running outfits, her long, Technicolor fingernails. She was both the fastest and most glamorous female performer who had ever set foot on the track (Cool Runnings as cited in Lock 2003, p. 407).

Yet, given that Semenya opts to compete as her authentic self and not create a feminized version, consequently her sex is questioned and she is presumed to have an unfair advantage over her competitors, which the fighters will battle in round two.

But first, seconds before the bell rings to end round one, Sally ducks and sidesteps all Riley's arguments, by agreeing with Riley's claims about the hyperfemininity and heterosexual ideals that have led to the many of the doubts about Semenya. Sally shares Riley's position that the genesis of prejudice against Semenya is unjust and that the history of sex verification is shameful. Still, as knowledge of the genetic fallacy shows, origins do not determine right or wrong; the reasons Semenya came under scrutiny are questionable, even illegitimate, but the scrutiny may still reveal an unfair advantage. And, with that, round one concludes.

### ***Round 2: Unfair Advantage?***

Prior to round two commencing, Bernice reminds the competitors and the spectators that this is an MMA fight and although there will be a mix of fighting techniques, this is not a rugby match. Bernice thinks it is important to emphasize that although both fighters are highly trained and skilled fighters, they are not rugby players and shouldn't pretend to be. Analo-

gously, the authors acknowledge that they are not scientists, nor are they geneticists. However, they are researchers, specifically philosophers, who think it is an important exercise to analyse the argument of unfair advantages in connection to the Semenya case.

Riley launches into round two swinging about Michael Phelps and his large flipper-like feet, and wide wingspan that enable him to propel through the water in a more efficient manner than some of his competitors. Similarly, the beautiful and powerful strides of Usain Bolt launched him into record books in the 100m with legendary status. Riley questions Sally, isn't elite sport about celebrating athletes who are 'genetic freaks' and are capable of accomplishing amazing things on the playing surface?

Sally counters, pointing out that there aren't protected categories for flipper-like feet and powerful strides. But let's assume, for the sake of the bout, that wingspan was a protected category. Missy Franklin and Ryan Lochte have almost identical wingspans, but her best time in the 200 meters backstroke is a full nine seconds slower than his, which would have put her half a lap behind him if they swam their best times against one another in the same race. "In a world in which competitors were categorized by height and wingspan—or just height or just wingspan—instead of sex, Franklin would not have had a world record; she would not have been on the podium; in fact, she would not have made the team. In those circumstances, we might not even know her name" (Coleman, 2018, p. 90). Of course we don't categorize by height or wingspan because, while wingspan may be a competitive advantage within a category, it is not considered determinative of outcome, not even to the extent that some other traits (e.g., age, weight) are taken to be. We create separate categories when we believe that not doing so would eliminate uncertainty about the outcome due to competitive advantage. So, we don't allow a 20-year-old high jumper to compete against a 9-year-old, or a boxer weighing 130 kilograms to take on one weighing 59 kilograms, but we allow short people to compete against tall people, even in sports where height is an advantage. Further, were we to decide that all genetic or natural advantages were equal, the elimination of the women's category would inevitably follow, since the effects of androgenization, naturally occurring for males, are unquestionably genetic and natural.<sup>2</sup>

Riley continues to pounce and argues that it is a different game for women athletes. According to Munro (2010),

Female athletes inhabit impossible bodies, where our desire for the ideal—the Olympian, the record-breaking—comes up against our drive to normalize. The physically exceptional is always in danger of being seen as abnormal, deviant, or monstrous... All world-class athletes have queerly God-like bodies, strange genetic gifts; but women whose

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<sup>2</sup> Ross Tucker asserts: "Fundamentally, the **difference between the men's world champion and the women's world champion in any given event is 'androgenisation' or virilization that drives a set of secondary sex characteristics** including higher muscle mass, lower fat mass, greater strength, increased cardiovascular capacity and function, more haemoglobin, different skeleton." The primary androgen in males is testosterone. Thus, Tucker claims, "If you have the Y chromosome, and the testes, and the testosterone, and you can use the testosterone, then you have a huge advantage compared to a woman who has all the same other attributes, but not those. So if you really want to get rid of regulation and separation based on 'natural genetic advantages', then you should just as well throw all humans into one race, and crown the 'World's fastest human', and see how women get on" (Tucker, 2019)

bodies achieve the masculine—long distance runners who no longer menstruate, gymnasts who have never developed breasts—are under particular pressure to visually and performativity, re-feminize themselves, even as their bodily transformations are required (387).

Sally strikes that societal attitudes and expectations, even as loathsome as these, are not what is at issue in this fight, and holds her footing to redirect to the claim that the greatest natural advantage is androgenization, and that is driven by testosterone, so the best way to separate the men's and women's categories is by testosterone level, even though it's not the sole determinant of athletic success.

Regulations limiting the level of endogenous testosterone in women athletes were first introduced in by the IAAF in 2011. According to Jordan-Young and Karkazis (2019), it is challenging to use science to determine which sex category athletes ought to participate in because there are at least six markers of sex, including chromosomes, gonads, hormones, secondary sex characteristics, external genitalia and internal genitalia, and none are binary. The current IAAF rules requiring that women whose bodies produce higher levels of testosterone must lower to it to a specific threshold continue to be debated with respect to ethics, confidentiality, rights, values, justice, and science (Jordan-Young & Karkazis, 2019). For Jordan-Young and Karkazis (2019), “Studies that measure T and performance at a single time point can only show correlations. To answer questions about causation, you need different designs that can isolate changes in T and see how performance is affected” (p.188).

The IAAF has maintained that testosterone is the single most important factor in determining whether a competitor has an unfair advantage over other competitors. For Jordan-Young and Karkazis (2019),

In a context in which T alone is deemed to determine advantage and disadvantage, what makes sense and is valued as legitimate is the need to protect women athletes with lower T from presumably “unfair” competition. But women investigated for the possible high T face harms that are nowhere in the calculus: having their identity publicly debated, their genitals scrutinized, the most private details of their lives assessed for masculinity, and their careers and livelihoods threatened, and being subject to pressure for medically unnecessary interventions with lifelong consequences. The narrative of harm is inverted: how does the putative advantage conferred by T matter more than concrete and demonstrable harms to people? (200).

Sally gets in a quick shot with the observation that the final question here sounds empirical, but surely is only rhetorical as there is no indication of how such harms might be weighed. No one has denied that there are costs to the IAAF policy; CAS even characterized it as discriminatory, but maintained that “such discrimination is a necessary, reasonable and proportionate means of achieving the IAAF's aim of preserving the integrity of female athletics in the Restricted Events” (CAS, 2019).

Another advocate for Semenya, Ross Tucker, published a 2019 article on his Science of Sport website, in which he attempted to explain CAS' decision to support the IAAF's regulations. Specifically, Tucker suggested that the case forced a decision between concept and theory versus evidence and factual data. On the side of concept, the IAAF emphasized the

need to protect women's athletics by maintaining sex-segregated categories. On the side of empirical evidence, Athletics South Africa (on behalf of Semenya) focused on the paucity of evidence showing that naturally occurring high testosterone levels guarantee a performance advantage in the events covered by the ruling. Further, Tucker contends "[I]t would seem to me that had this been based on the quality of evidence, the integrity of the scientific process, and procedural integrity, rather than the biological concepts for testosterone and performance advantage when comparing biological males to females, the outcome arrived at would not be possible" (Tucker, 2019). Tucker also notes that CAS had reservations about the inclusion of the 1500m event despite no evidence of a performance difference because of testosterone, however, the IAAF will likely ignore such concerns since CAS did not require otherwise. At the end of his analysis, Tucker (2019) argues, "It comes down to what you weight more—the concept of the advantage, or the lack of evidence for it. They went for the former. The end."

Jordan-Young and Karkazis (2019) maintain that testosterone does not drive athletic performance, and argue that it is, "neither a sufficient nor even a necessary ingredient" (2019). They refer to an example of a woman who has complete androgen insensitivity syndrome who do not have the ability to respond to testosterone at the cellular level, and argue that athleticism isn't separate from other human capacities; "athletes must develop these capacities to a very high level, but at lower levels, strength, flexibility, coordination and motivation are required for basic survival" (Jordan-Young & Karkazis, 2019, p. 201).

Sally strikes that there is at least anecdotal evidence that Semenya, as an athlete with DSD has an unfair advantage. For example, at the 2016 Rio Olympic Games, all three medals in the women's 800 meters race went to athletes with DSD: gold to Caster Semenya, silver to Francine Niyonsaba, and bronze to Margaret Wambui. Surely, this is more than mere coincidence. Further, even though sport scientist Tucker disagreed with the CAS decision in the Semenya case, he maintains that the Jordan-Young and Karkazis claims about testosterone are completely mistaken. As Tucker puts it, "...the point about testosterone is not that it guarantees better athletic performance, but rather that it creates the potential, in the right person (Athlete A), for a performance advantage that is so large that **a person who is identical in every respect with the exception of testosterone (Athlete B) will be 10% to 12% slower than Athlete A**" (Tucker, 2019). Testosterone is not the sole determinant of athletic performance, but it is the predominant ingredient. To claim that it is inconsequential is either ill-informed or disingenuous. Sally sees that Jordan-Young and Karkazis acknowledge that testosterone is correlated with athletic advantage, but want to dismiss its effects because the evidence can't show that it is causative. She notes that evidence shows only that smoking is correlated with lung cancer, not that it causes it, and yet no one would seriously claim that we should forget about smoking and look for the real cause of cancer. This is too much smoke for Riley; the idea that athletes' testosterone levels will determine which 800m race they are eligible to compete in makes the last from blow from Sally particularly painful.

The irony is that as both fighters struggle to find their footing and regain control as round 2 comes to an end—neither competitor is convinced by the scientific evidence offered by the other. Both fighters agree that, "Questions about biology and human nature are inextricable from moral and political debates about the value of human variations, the possibilities for equality, and the urgency and feasibility of social change" (Jordan-Young & Karkazis,



2019, p. 223), but they differ about what this proposition entails, thus, they remain unmoved from their positions.

*Ding-ding, the announcer chants that Bernice calls round 2 a draw, both fighters have gas left in the tank but question their fight strategies, as the time comes to roll into round 3 and battle human rights, harm and sex verification.*

### **Round 3: Human Rights and Harm**

Riley gasps for air after a tough kick to her sternum and ponders how, at the end of September 2009, Semenya wrote in the Players Tribune about the first time she competed at an IAAF meet,

They did not say I was the first black South African woman to win gold at the world championships. They did not say I was the best... They did not see me as a young girl from the bush who was the best in the world. They did not see me as human at all. They saw me as science. They wanted to test my body... They have tested my body. They have tried to make me change my body. I do not know what effects that medicine will have on my body for the rest of my life. I know the reason for this is because I am great. If I had high testosterone and wasn't winning would they even care at all? I know it is a way to have control... I wanted to be a soldier. And I am in some ways now—fighting for fairness. Fighting for gender rights. This is a job for a girl (Semenya, 2019).

Forcing healthy individuals to undergo medical interventions to ensure a level playing field is fraught with ethical concerns. In late September of 2019, a damaging documentary produced by Annet Negesa, 'How the IAAF fails to ensure human rights', was released by the German channel ADR. According to Brown's (2019) analysis of the documentary for the Sports Integrity Institute, the documentary shares stories of three women who were forced to undergo surgery to lower their testosterone levels. The documentary provides a first-person perspective into cases similar to Semenya's. Women who just wanted to compete had their athletic careers destroyed because of the surgery so that they could fit the IAAF standards of what constitutes a woman. As one athlete shared, "I wish I would have died in their hands, because then they would have been accountable and punished for their actions" (Brown, 2019). The IAAF denies ever forcing competitors to undergo surgery.

A year prior to the release of the documentary, in October of 2018, three United Nations (UN) experts on health, torture, and women's rights wrote a letter critiquing the IAAF,

The regulations reinforce negative stereotypes and stigma that women in the targeted category are not women – and that they either need to be "fixed" through medically unnecessary treatment with negative health impacts... Women who do not conform to culturally constructed notions of womanhood are particularly at risk of discrimination, violence, and criminalization. By singling out a certain group of athletes and denying them membership in the 'female' category, the IAAF puts these women at risk of repercussions far beyond the inability to compete (Worden, 2018).

Then, in May of 2019, at the 40th General Assembly of the United Nations, advocated for the elimination of discrimination of girls and women in sport and as one Minister noted,

The international community has a duty to protect and defend the rights of Caster Semenya and other female athlete like her across the world, based on the premise that their human rights are being violated. The international campaign to preserve Caster's right to participate in global sports, is a struggle for all women in the world against discrimination, sexism, and patriarchy (Diamond, 2019).

At the core of this debate is the fact that the women who have been braced this storm are all women of colour and from the global south. Semenya's case has many intersections with racism which must be addressed. The IAAF in its latest policy specifically targets Semenya's competitions, the 400m, 800m and 1500m race. Why is there such little, if any, discussion about other athletes, outside of track and DSD? What is it about Semenya in the culture of the IAAF that has enlisted such outcry?

A striking image, from what could likely be Semenya's final Olympics in Rio in 2016, came after won gold. In the image, she moves to congratulate her competitors, Canadian Melissa Bishop and Britain's Lindsay Sharp. Both white competitors ignore her and later criticize Semenya publicly. For Munro<sup>3</sup>, Semenya's embodiment cannot be understood without considering about the signification of her race,

The legacy of imperialism and slavery, and how it has shaped the figuration of the black women, seems to being re-pixelated, if you will, through the global media circus over Semenya... For South Africans, the questioning of Semenya's sex... brings to mind apartheid's categorizations of people into racial groups—a traumatic and chaotic process that involved the inspection of people's bodies on a nationwide scale (Munro, 2010: 390).

Hence, Semenya is targeted for failing to conform to ideal notions of femininity and for her race.

Sally spins into the cage and bounces back to contest the supposition that the IAAF's actions against Semenya are racist. The problem with this argument is that the majority of all athletes running the 800 meters event are of African-heritage. In this event in 2018, "13 of the 14 best athletes in the world... were black. If DSD athletes are slowed by these regulations, the athletes who will soon fill the podium—who will benefit most—are black women" (Dennehy, 2019). Riley retorts with a quick two punch and clarifies that it is not solely the IAAF's actions which are considered racist, rather, it is all the noise that has surrounded this case from the onset. For instance, journalist Ariel Levy (2009) described 10 years ago, the offensive portrayal of Semenya in media, and how Semenya was led to believe that she was undergoing additional doping tests when it was sex verification. Riley wipes the sweat from her brow, as it sinks it what the past 10 years must have been like for Semenya, for Riley, this is the upshot of the battle. Sally doesn't contest that Semenya has been treated horribly, but she remains unconvinced that racism is the motivating factor for the policy.

As to the claim that Semenya's human rights have been violated, this may be true. Certainly, the way she has been treated and the lack of concern for her privacy are deplorable,

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<sup>3</sup> See media coverage and interviews here: <https://www.youtube.com/watch?v=-fZcc6mLg5c>

but that speaks to an inexcusable lack of respect on the part of those implementing the policies, not to the legitimacy of the content of the policy itself. The same is true for slippery slope arguments suggesting that Semenya's lost appeal could lead to violence and criminalization, sexism, patriarchy and apartheid. Perhaps an argument to that effect could be made, but it cannot simply be asserted.

Sally cannot, however, altogether block the blows regarding harm, as she concedes that requiring athletes (or anyone else) to undergo unnecessary medical treatment constitutes a serious ethical problem. Physicians pledge to act in the best interests of their patients, to "do no harm." But the IAAF regulations would, and according to Riley 'have', required Semenya and other athletes with DSD to take drugs to lower their naturally occurring testosterone levels. Since these drugs were not designed or tests for this result, the proper and safe dosage has not been determined. Further, this policy would violate medical ethics' principle of autonomy. "The athlete has little choice here, so there is an element of coercion, but the net result is the possibility of harm (thrombolytic events being the main one, especially in athletes for whom air travel is a necessary risk factor)" (Tucker, 2019). Acknowledging the violation of (at least) two principle of medical ethics drops Sally to one knee, just as Bernice ends round 3.

*The announcer yells BOOM over the loud speaker and the crowd roars with anticipation of which fighter shall be declared victorious.*

### ***Knockout and the next match up***

Bernice, the ref, separates the fighters and calls the fight a draw. Both Riley and Sally fall to the octagon floor in exhaustion and desperation for one to be declared the champ. However, there is no winner here, only more fights to be had. Ironically, both fighters want to achieve the same thing—fairness and justice in sport for women athletes. Both fighters also contemplate their future, and their next bout. They are cautious about future matches analyzing Semenya's case and the mistake of making comparisons and analogies for trans athletes. The fighters also consider Butler's cautions,

Rather than try to find out what sex Semenya or anyone really "is" why don't we think instead about the standards for participation under gender categories that have the aim of being both egalitarian and inclusive? Only then might we [...] open sports to the complexly constituted species of human animal to which we belong (Butler, 2009).

Both also reflect on their personal journeys and ponder the costs of all these fights over sex verification and Semenya. Finally, as they pound gloves and leave the octagon, they ask each other: have we been fighting all this time in attempt to define what a biological woman is, when the real fight we ought to be having is questioning what we have done to the institution of sport to get to this point?

## **REFERENCES**

Brown, A. (October 8 2019). "IAAF used medically damaged athletes to prop up DSD regulations." *Sports Integrity Initiative* <https://www.sportsintegrityinitiative.com/iaaf-used-medically-damaged-athletes-to-prop-up-dsd-regulations/>

Burfoot, A. (April 22 2019). "The Whole World is Watching: Caster Semenya vs IAAF." *LetsRun.com* <https://www.letsrun.com/news/2019/04/the-whole-world-is-watching-caster-semenya-vs-iaaf/>

Butler, J. (Nov 20 2009). "Wise distinctions." *London Review of Books Blog*, <https://www.lrb.co.uk/blog/2009/november/wise-distinctions>

Coleman, D.L. (2018). "Sex in Sport." *Law and Contemporary Problems*, 80: 63-126.

Court of Arbitration for Sport (May 1 2019). "CAS Arbitration: Caster Semenya, Athletics South Africa (ASA) and International Association of Athletes Federation (IAAF): Decision." [https://www.tas-cas.org/fileadmin/user\\_upload/Media\\_Release\\_Semenya\\_ASA\\_IAAF\\_decision.pdf](https://www.tas-cas.org/fileadmin/user_upload/Media_Release_Semenya_ASA_IAAF_decision.pdf)

Davis, P. and Edwards, L. (2014). "The new IOC and IAAF policies on female eligibility: Old Emperor, new clothes?" *Sport, Ethics and Philosophy*, 8(1): 44-56.

Dennehy, C. (March 2 2019). "No easy answer in the debate that's become too toxic to have." *Irish Examiner* <https://www.irishexaminer.com/breakingnews/sport/no-easy-answer-in-the-debate-thats-become-too-toxic-to-have-908120.html>

Diamond, J (March 23 2019). "UN Human Rights Council warns IAAF's proposed Semenya ruling could breach international law." *Inside the Games*. <https://www.insidethegames.biz/articles/1077129/un-human-rights-council-warns-iaafs-proposed-semenya-ruling-could-breach-international-law>

International Association of Athletics Federation (2019). Athlete Profile, Caster Semenya, <https://www.iaaf.org/athletes/south-africa/caster-semenya-242560>

Jordan-Young, R.M. and Karkazis, K. (2019). *Testosterone: An Unauthorized Biography*. Cambridge Massachusetts: Harvard University Press.

Karkazis, K., Jordan-Young, R., Davis, G., and Camporesi, S. 2012. "Out of Bounds? A Critique of the New Policies on Hyperandrogenism in Elite Female Athletes." *The American Journal of Bioethics*, 12(7): 3-16.

Levy, A. (November 19 2009). "Either/or: Sports, Sex, and the Case of Caster Semenya." *The New Yorker*. <https://www.newyorker.com/magazine/2009/11/30/eitheror>

Lock, R. (2003). "The doping ban: Compulsory heterosexuality and lesbophobia." *International Review for the Sociology of Sport*, 38(4): 397-411.

Longman, J. (May 21 2019). "Caster Semenya Plans to Run 3,000-Meter Race, Which Doesn't Require Her to Limit Testosterone." *New York Times* <https://www.nytimes.com/2019/05/21/sports/caster-semenya-enters-3000-meter-race-which-doesnt-require-her-to-limit-testosterone.html>

Munro, B. (2010). "Caster Semenya: Gods and Monsters." *Safundi: The Journal of South African and American Studies*, 11(4): 383-296.

Nkosi, L. (August 12 2019). "What we talk about when we talk about Caster Semenya." *Mail & Guardian*. <https://mg.co.za/article/2019-08-12-what-we-talk-about-when-we-talk-about-caster-semenya>

Pielke, Jr., R. Tucker, R., and Boye, E. (2019). "Scientific integrity and the IAAF testosterone regulations." *The International Sports Law Journal*, 19:18-26.

Pieper, L.P. (2016). *Sex testing: Gender Policing in Women's Sports*. Champaign, IL: University of Illinois Press.

Pielke, R. Jr. (2017). "Sugar, spice and everything nice: How to end 'sex testing' in international athletics." *International Journal of Sport Policy and Politics*, 9(4): 649-665.

Sailors, P. (2016). Off the Beaten Path: should women compete against men? *Sport in Society*, 18(8-9): 1125-1137.

Sailors, P. (2014). Mixed Competition and Mixed Messages. *Journal of the Philosophy of Sport*, 41(1): 65-77.

Semenya, C. (September 27 2019). *The Players Tribune*. <http://projects.theplayertribune.com/caster-semenya-gender-rights/p/1>

Tucker, R. (May 2 2019). "On DSDs, the theory of testosterone, performance, the CAS ruling on Caster Semenya." *The Science of Sport*. <https://sportsscientists.com/2019/05/on-dsds-the-theory-of-testosterone-performance-the-cas-ruling-on-caster-semenya/>

Worden, N. (October 1 2018). "UN Experts Slam Athletics Gender Regulations." *Human Rights Watch*. <https://www.hrw.org/news/2018/10/01/un-experts-slam-athletics-gender-regulations>